

Department of Social and Public Service

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# The Restoration of the Criminal

By

Wesley H. Hart, LL.D

Printed for free distribution

American Unitarian Association  
25 Beacon Street, Boston



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## The Restoration of the Criminal

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## FOREWORD

The colossal failure of our civilization is in our treatment of the criminal. Our prison systems are based upon the idea of punishment, not on the idea of restoration. Our jails and prisons have failed to protect society and have too often been operated so as to debase rather than to rehabilitate the prisoners. This pamphlet is published in the hope that it will help to inform and stimulate public opinion. It urges the changes in our point of view and in our methods that are needed alike for the welfare of society and for the benefit of its backward and delinquent members. It proposes the substitution of principles of curative, educational and preventive treatment for the present punitive methods. Here are described some of the constructive ideas that offer a foundation for a new and successful penology, a change from an ineffectual and often cruel system to one which gives some hope of the restoration of the criminal to productive life and normal citizenship.

The writer of this pamphlet has been the Secretary of the Minnesota State Board of Charities and Corrections, Superintendent of the Illinois Children's Home, President of the National Conference of Social Welfare, and President of the American Prison Association. He speaks out of ample knowledge and wide experience.

SAMUEL A. ELIOT

# The Restoration of the Criminal

*Brethren, even if a man be overtaken in any trespass, ye who are spiritual, restore such a one in a spirit of gentleness; looking to thyself, lest thou also be tempted.— GALATIANS 6 : 1.*

Our theme more fully developed is the application of the principles of the gospel in our treatment of the criminal, as set forth by the Apostle Paul in his letter to the Church of Galatia.

We may paraphrase this text in the spirit of modern times and modern jurisprudence as follows:

## PAUL'S VERSION

Brethren, if a man be overtaken in any trespass  
Ye who are spiritual,  
restore such a one  
In a spirit of gentleness  
Looking to thyself, lest thou also be tempted

## THE MODERN VERSION

Gentlemen, if a man be caught in a crime  
You that are worldly minded punish such a one  
In a spirit of revenge  
Looking out for yourself  
lest you suffer damage

Paul's admonition is addressed to Christian people. He says: "Brethren," and, "ye who are spiritual." What is a spiritual person? It is one who has the spirit of Christ; that is the spirit of love to God and love to man. Paul here enjoins us to exercise the spirit of love in our dealings with the criminal, just as we are to

## The Restoration of the Criminal

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exercise the same spirit “toward all men, and especially toward them that are of the household of the faith” (Galatians 6 : 10).

But Paul, in this text, suggests some rather startling ideas. He says: “Restore such a one *in a spirit of gentleness.*” At first thought it does not seem consistent to inculcate “gentleness” in the treatment of those who are enemies of society,— swindlers, burglars, highwaymen, and even murderers,— yet that is the spirit which Jesus himself exercised, and today we are discovering that it is often the most effective way of dealing even with the worst criminals. Our instinct is to “treat ‘em rough”; but the rough criminal is accustomed to that kind of treatment and is only hardened by it.

One of the best prison wardens of this generation was Albert Garvin, who was warden of prisons and reformatories in Illinois, Minnesota, Kansas, and Connecticut, and has now retired. He was at one time assistant superintendent and disciplinary officer at the Minnesota State Reformatory for young men. One day an excitable young prisoner working in the granite shop flew into a passion, seized a hammer, and threatened to kill any one who came near him. The guard, frightened, sent for Mr. Garvin. He approached the prisoner and said quietly: “Give me the hammer.” The prisoner did so. “You may come with me.” The prisoner followed him; but, still excited and violent, cursed the officer and called him every vile name possible. Mr. Garvin made no reply until they reached the cell house,

## The Restoration of the Criminal

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where the prisoner expected to be put in solitary confinement. At the door Mr. Garvin turned upon him and said: "See here! I am angry now; I am not fit to punish you. You may go back to your work." The astonished prisoner went back to the shop and resumed his task and there was never any more trouble with him.

In most of the prisons of the United States flogging, which was once thought to be indispensable for hardened and violent offenders, has been abolished. Only the other day the Governor of Alabama instructed the Warden General to abolish whipping, which has always been prevalent in that state, saying that careful investigation had convinced him that milder measures would do better. He instructed him to require the wardens to destroy their straps and refrain from the practice on pain of instant discharge.

I believe it is fair to say that, in these days, the use of flogging is always a confession of weakness on the part of those who are responsible, in that they are unable to find and exercise a better and equally effective plan.

I have known conscientious parents—teachers, and prison wardens, who believed that it was impossible to secure obedience, order, and discipline without whipping; but experience has proved that it is possible for those who have the necessary wisdom, tact, and patience, and while such punishment may possibly have some beneficial effect upon men of certain dispositions, the demoralizing effect upon officer and prisoner and the danger of abuse by irresponsible or cruel officers are so

## The Restoration of the Criminal

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great as to outweigh any possible benefit. The legislature of Delaware refuses to abolish the whipping post, and the responsibility for its use is placed by law upon the prison warden, a humane Christian man, who is earnestly and openly opposed to it; yet he administers the punishment in person because he is not willing to take the risk of its abuse by subordinates or to subject them to the demoralization which usually affects the executioner.

We must not make the mistake of understanding that—in our text, Paul was making light of sin or crime. He recognized most clearly the wickedness of sin and the dreadful consequences which follow it. In this same passage he says: “Be not deceived; God is not mocked: for whatsoever a man soweth, that shall he also reap” (Galatians 6:7).

It is an instinct of the human soul that the wrongdoer ought to suffer. When a dastardly offense is reported, we say: “That man ought to be punished.” When a man beats his wife and abuses his children, we say instinctively: “He deserves the whipping-post.” When the Turks massacre men, women, and children without pity or remorse, we say they should be destroyed as a nation and driven out of Europe. When a public offender goes scot-free without rebuke through the use of wealth or through the perversion of the law, we recognize it both as an injustice and a misfortune to society. When one of us is guilty of slander, injustice, or unfair dealing, if misfortune results, he says: “It was good enough for me, I deserved it.”

## The Restoration of the Criminal

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The idea long prevailed, and still survives in much of our jurisprudence, that "punishment should fit the crime"; that the prisoner should suffer a penalty proportionate to his wrongdoing. If he stole less than twenty dollars, that was a misdemeanor: send him to jail for thirty or sixty days. If he stole more than twenty dollars, that was a felony: send him to the state prison for one, two, or five years. Or the judge might impose a fine of five dollars, ten dollars, or one hundred dollars according to his estimate of the enormity of the crime.

It has long since been recognized by thoughtful students of penology and criminology that the element of revenge — vindictive punishment — has no proper place in our dealings with the criminal; indeed, it is impossible for the human mind to measure the exact ill-desert of a fellow-man and to devise a penalty which shall be fairly proportioned to the magnitude of his guilt. The springs of human action lie deep in the human soul and are fed by unmeasured springs of heredity and environment. Different judges — and even the same judges at different times — make the most diverse estimates of the amount of punishment deserved. The statistical records of the United States census of sentences imposed by judges, and personal observation of the treatment accorded to convicts, in our prisons, reveal a hopeless diversity in the penalties imposed and the suffering inflicted upon those wrong-doers who fall into the hands of the law.

## The Restoration of the Criminal

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To illustrate: Two young fellows go out together and steal an automobile, drive it to a strange community, sell it for \$200, and divide the proceeds equally. They are tried and convicted and the judge pronounces an equal sentence and the spectators agree that justice has been done.

But a case study of the two criminals reveals these facts: One of these two boys was born in the slums. His father was a thief; his mother was a moron. His home was poor; the neighborhood was bad; he had no religious influences; his father taught him to steal, took him out of school at the end of the fourth grade, put him to work, and appropriated his wages. The other boy was well born and intelligent; he had a comfortable home; his parents were well-to-do; he was sent to church and Sunday-school; he went through high school. He had good clothes and spending money. His environment was good.

We say: The second youth was much more guilty than the first and deserved more severe punishment. But stay! pursue the inquiry further and you discover that the father of the second boy was so busy making money that he gave no time or attention to his son. He knew nothing of his associates, his habits, or his doings. A foolish and indulgent mother spoiled him, gave him too much pocket money, and concealed his escapades from his father.

Learning these facts we say they make a difference, and we begin to see the impossibility of measuring accurately human ill-desert.

## The Restoration of the Criminal

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Leaving out of the discussion the multitude of wrong-doers who go free with the assistance of able lawyers or for lack of evidence or because of the forbearance of judges toward inexperienced offenders, and confining our study to those who are actually committed to prison, we need not be uneasy lest the prisoner should fail to receive the suffering which is his due. The prisoner does suffer and suffers bitterly.

A young man has been following the path of least resistance; he has been careless, reckless, and forgetful of the law. Heretofore he has escaped detection; but at last he goes a step too far: he feels the hand of the deputy sheriff upon his shoulder. "Come with me; I have a warrant for your arrest." His arrest is a tremendous shock. He realizes for the first time the consequences of his reckless course. He is frightened and penitent. He says: "If I can only get out of this trouble, I will never offend again."

This is the moment of opportunity. More can be done in a week to reform and redeem him than can be done in a year after he is sent to prison. If he falls into the hands of a wise judge, where the law permits, he may be placed on probation under the guidance and watch-care of a selected probation officer and may be restored to right living without going to prison. Thousands of young offenders have been thus restored.

If the accused prisoner has credit, or if he has a friend who has credit, unless he is accused of a high crime, such as murder or arson, where life is lost, he executes a bail bond and goes free until the time comes

## The Restoration of the Criminal

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for his trial; but if he is unable to give bail, he is sent to the county jail. There he is thrust into a steel cage, where he is exposed to the view of visitors. On the outside wall of the county jail at Syracuse, New York, I saw a sign which I begged to have taken down. "*Fifteen Cents Admission*"! Fifteen cents to see human beings exhibited like wild beasts in a menagerie! In jail the prisoner is forced into intimate association in idleness with the worst men to be found in the county—men who delight in corrupting and debasing those who are untaught in the lower degrees of vice and crime. These men are quick to discover that the newcomer is "soft." His voice trembles; his cheeks show traces of tears. They ridicule his contrition, persuade him that he is being unjustly treated, and tell him of some criminal lawyer who will get him off, innocent or guilty, and thus the opportunity for his reclamation is lost forever.

The jail ought to be the most reformatory prison in the land, because it receives the criminal at the most opportune time; but all who are familiar with the county jails agree that they are almost universally schools of crime, from which prisoners infallibly come out worse than they go in. Most county jails are unwholesome and unsanitary. Many are ill-kept and unclean. Nearly all jailers are untrained and incompetent to deal with their wards. As a rule, prisoners in county jails are worse off than those in state prisons. Yet the law declares that every accused person shall be deemed to be innocent until he is proved to be guilty.

## The Restoration of the Criminal

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The next step in the proceedings is the action of the grand jury. If they discover apparent evidence that a crime has been committed, they find an indictment, a solemn accusation of guilt.

Later comes the public trial before a jury of his peers, — “twelve men good and true,” — who, after hearing the evidence, render a verdict of guilty.

Then the judge, clad in his robes of office, pronounces a sentence of one year or five years or ten years in the state prison, and the man stands in the face of all the world a condemned criminal.

Next comes the sheriff to execute the sentence. Steel handcuffs are locked upon the prisoner’s wrists. Perhaps iron shackles are locked upon his legs, and he is conveyed twenty or fifty or one hundred miles in a public train to the state prison, where he is delivered to the custody of the warden.

In the prison, straightway he becomes a slave. The Constitution of the United States declares that “Slavery or involuntary servitude, *except for crime*, shall not exist” within its borders.

The prison warden holds the powers of the captain of a man-of-war. The prisoner must absolutely submit his will to that of another. As a slave, his wages are withheld. In the state of New York, the wages of state prisoners are fixed at a cent and a half per day. Think of the effect upon a man to know that his day’s work is valued and paid for at a cent and a half!

His correspondence is put under espionage. Unless he gives written consent thereto, he can receive and

## The Restoration of the Criminal

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send no letters. The most sacred and confidential communication between husband and wife must be read by a prison officer. When his friends visit him, he must talk with them under the eye and within hearing of a prison officer. I have frequently seen a prisoner clad in prison garb sitting in the public corridor with his little child upon his knee, visiting with his wife in full view of every passer-by.

In some prisons there is an irritating system of "trusties," whose trustworthiness consists in acting as spies upon their fellows, reporting them for any trifling infraction of the rules.

In some prisons there is a multitude of petty and vexatious rules. I remember visiting a prison where there were forty rules, and the violation of any one of them might contribute to lengthen the man's stay in prison.

It is often said that the dull, stupid, indifferent prisoner does not suffer — that he takes his confinement as a matter of course; but the order, cleanliness, industry, and discipline which are essential for the health and well-being of the prisoners and the officers are most irksome to the man who is accustomed to go the way of least resistance, and the loss of liberty is a bitter punishment to every prisoner.

If the prisoner is a man of any character and standing, his real punishment begins when he leaves the prison and returns to society, knowing that he is marked as an ex-convict. Sometimes prisoners, discharged with a ten-dollar suit of clothes and ten dollars in money, are

## The Restoration of the Criminal

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refused employment, moved on by the police, and blackmailed by ex-convicts, until, disheartened and desperate, they lapse again into crime.

The most important word in our text is the word "restore." The Greek word which is translated "restore" is very familiar to us in English. The word is "katartizein" (*artisan*). I got a new idea of the meaning of this text some time ago when my daughter came into possession of an old veneered mahogany bureau. It had lain for many years in attic and stable; it had been buffeted, bruised, and scratched; it was an unsightly object—apparently worthless. My daughter found an old country-man who was an artisan. It was his delight to restore old furniture. He said: "What a beautiful piece!" He scrubbed it and scoured it and scraped it. He put in a hundred and one new pieces of mahogany veneer; then he sandpapered, polished, and varnished it, and there was a beautiful piece of furniture to delight the eye of the housewife.

We are instructed to "restore" the criminal. He is debased, disfigured, degraded, unsocial, perverted from the image of God in which he was created. We undertake the difficult and delicate task of restoring that man; but what kind of an artisan do we put on the job? We consign him to the care of prison officers who have had no training whatever for the task: many of them chosen not for fitness, but as a political reward.

"Restore such a one"—restore him to what?

We are to restore him to physical health by medical, surgical and dental treatment, dieting, exercise, and

## The Restoration of the Criminal

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wholesome living. Most prisoners are physically defective.

We are to restore him, if possible, to mental health. Probably one-third of the prisoners are insane, feeble-minded, psychopathic, or so defective as to be classed as morons. Improvement can be made in many such cases by remedying physical defects and by skilful psychiatric treatment.

We are to restore him to spiritual health. He is unsocial, insurgent, rebellious, morose, discouraged, or despondent. He needs to be taken out of himself by the power of religion, and he needs especially to come in contact with wholesome personalities — good, upright, right-minded men or women to reveal to him the higher possibilities of human nature.

He must be restored to faith in God, to faith in his fellows, to faith in himself. We must awaken hope, courage, steadfastness, or he cannot stand alone after he leaves the prison.

People are accustomed to say, "Once a criminal, always a criminal"; but thousands of men and women have been restored to wholesome and upright lives through wise and sympathetic treatment.

One of the most effective agencies of restoration is the probation system. There has been a good deal of criticism of probation, partly because the public does not understand its method and purpose, partly because of its misapplication to criminals who are not eligible and its repeated use upon the same prisoner after its possibilities for good have been exhausted, and chiefly

## The Restoration of the Criminal

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because of the lack of a sufficient number of competent, faithful, and consecrated probation officers.

If one of you business men has a young man of previous good character in your employ who gets in with a fast crowd, spends beyond his income, and then fails to turn in his collections or borrows from the till, you do not swear out a warrant and send that young man straight to jail. You call him into your private office and you say: "Charlie, you have made a great mistake; you are traveling the wrong road and you are going straight to ruin. I could send you to prison, but I am going to give you a chance. You must quit that fast crowd, turn over a new leaf, and apply yourself to business. You are to make good the stolen money at the rate of twenty dollars per month. If you go straight, this mistake will not stand against you; but a second offense will bring its inevitable consequences." Probation is the state acting toward the young first offender with the same kindly consideration which is shown by the wise Christian employer.

The probation system has been used for juvenile offenders ever since the establishment of the juvenile court in 1899. It is rapidly being extended to adult offenders as well as children. In the state of Massachusetts three-fourths of all of the sentenced offenders are now placed under probation instead of being sent to prison.

Success in the restoration of the prisoner is dependent not so much upon the organization of systems of building, discipline, sanitation, feeding, and schooling

## The Restoration of the Criminal

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(though all of these are important), as upon the character and spirit of the warden, the deputy warden, the chaplain, the physician, and, especially, the common guards who come into immediate and personal contact with the prisoners. I believe that most of the many prisoners who reform are reclaimed through personal contact with an upright, straightforward, square-dealing prison officer who believes in the possibility of reformation and represents in the prisoner's mind the ideal of good manhood or womanhood.

Many prison officers are conscientious and well disposed, but most of them have no training whatever for their difficult and responsible task except such as they can pick up from their fellow officer, equally untrained. Some prison officers are profane, tricky, indifferent, cruel, grafters, or peddlers of narcotics. We need a new generation of prison officers qualified by character, disposition, education, training, good will, and devotion to their work. They must be men of courage, firmness, and justice; but they must also be possessed of that Divine spirit of sympathy which recognizes even the meanest prisoner as a fellow-man for whom the effort is to be made with that unfailing patience, hopefulness, and persistence which animated our Lord Jesus Christ.

As we have seen, we do inflict suffering upon the prisoner, even in the most humane and well-ordered prisons, and we justify that suffering on the ground that it is necessary for the protection of society; but the mere confinement and safekeeping of the prisoner during

## The Restoration of the Criminal

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the term of his sentence is only a temporary protection. Most prisoners go free in one, two, or three years, and the best protection for society is to try to send them out with right purposes and then to befriend and guide them until they are re-established.

The inevitable suffering of the prisoner may be so administered by wise and kindly officers as to contribute to his reclamation, or it may be so applied by ignorant or cruel officers as to harden and embitter him.

We read in the Epistle to the Hebrews (Hebrews 12:11)—“All chastening seemeth for the present to be not joyous but grievous; yet afterward it yieldeth peaceable fruit unto them that have been exercised thereby, even the fruit of righteousness.” What a pity it is for the prisoner to suffer the grievous chastening but to fail to reap the peaceable fruit that is enjoyed only by “them that have been exercised thereby”!

We have been speaking of the criminal. But, after all, what have the people of this Christian congregation to do with the criminal?—you honest businessmen; upright and conscientious doctors, lawyers, engineers, and automobile builders; you housewives, teachers, saleswomen, and stenographers—what have you in common with those burglars, highwaymen, drunkards, petty thieves, bootleggers, and disorderly women in the police stations, the County Jail, and the House of Correction?

At the beginning of our text Paul spoke in the plural. He said: “Brethren, ye that are spiritual”; but at its close he changes to the singular, with a startling personal

## The Restoration of the Criminal

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warning: "*Looking to thyself, lest thou also be tempted.*"

Women are better than men; but I will undertake to say, without fear of contradiction, that there is not a man present who has not at some time — and probably very recently — committed some act that, on a strict construction of the law, would be counted as a crime.

A criminal, according to the Standard Dictionary, is "a person who has committed an offense punishable by law." If you never stole a watermelon in the dark of the moon; if you never snatched a handful of peanuts when the vender's back was turned, you may have hurled a stone through the window of some obnoxious boy-hater. You may have written a message on the border of a newspaper and sent it through the mails at newspaper rates; that is a crime, subject to punishment. Some of you good, law-abiding women, returning from overseas, may have secreted a piece of lace or an article of jewelry and omitted it from your manifest. That is a crime, and many have been brought to book for it.

You men and women drive automobiles — high-power machines, capable of running forty, fifty, or sixty miles an hour. When you are driving on a good straight road and you see an official sign, "*Speed limit, twenty miles per hour,*" you always slow down to twenty miles an hour — *do you not?* Speeding is a direct violation of the law — a very serious one, because it is a matter of life and death. Scores of people are killed or seriously injured every day in the year by violations of the traffic laws. And what is your excuse for this criminal and

## The Restoration of the Criminal

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dangerous act? Some violate the law simply for the pleasure of "joy-riding"; others drive recklessly to save valuable time or because of the urgency of business; but as long as you violate the law simply for your convenience or pleasure, do not be too hasty to condemn those violators of law whom we call criminals but who excuse themselves in terms surprisingly similar to the excuses of those who violate the traffic laws.

The City of Detroit has opened a new house of detention where arrested women can be safely and decently kept, under the care of selected women, instead of being kept, as heretofore, in the same prisons with men. Detroit has also a new House of Correction, free from many of the objectionable features of the old prison system, and designed not only to employ the prisoners at suitable industries, but also to promote their restoration to good character and good citizenship.

Such institutions are conceived in the spirit of the text which we have been studying, and they should have the earnest interest and support of Christian men and women.

It is fitting that we Christian people, in our prosperity and in our favored and guarded lives, should heed the injunction in the Epistle to the Hebrews to "remember them that are in bonds, as bound with them" (Hebrews 13 : 3).

*"Looking to thyself, lest thou also be tempted."*





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